IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SEVENTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 12753 of 2005

Between:

M.A.Azeem Baig, S/o.Late M.A.Kareem Baig,
R/o.Lalapet, Guntur-522003
Guntur District.

..... PETITIONER

AND

1 The Chief Executive officer, A.P.State Wakf Board, Haz House,

Opposite Public Gardens,
Nampally, Hyderabad.
2 The Special officer, A.P.State Wakf Board, Haz House, Opposite

Public Gardens, Nampally, Hyderabad.
3 P.Khaza Shafee, Enquiry officer/Accounts officer,
A.P.State Wakf Board, Haz House, Opposite Public Gardens,
Nampally, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ, order or Direction declaring the proceedings F.No.8/DCB/D3/ Gnt/02-Suppl dated 27-5-2005 issued by the 1st respondent as illegal, improper, unjust, arbitrary, without jurisdiction and violative of the provisions of the Wakf Act 1995, the A.P. Wakf Rules 2000, and the principles of natural justice and consequently direct the 1st respondent to redeliver the charge and possession of the articles taken by the Inspector -Auditor, wakfs, Guntur on 30/5/2005 in pursuance of the impugned proceedings and for such purpose pass all

and necessary orders as this as this Hon'ble court may in the circumstances of the case and in the interests of justice deem fit and proper.

Counsel for the Petitioner: MR.B.V.S.SIVARAMA PRASAD

Counsel for the Respondents: SUBHANI.S.M.

The Court made the following :

Oral Order:

The petitioner, a Mutawalli of the Branch of the Big Mosque, Guntur was suspended pending enquiry by the 1st respondent in purported exercise of powers under Section 64(3) of the Wakf Act, 1995 (for short 'the Act') on the ground that a preliminary enquiry disclosed prima facie grave charges against him. The learned Standing Counsel for the Wakf Board produced reports, which disclose that the 2nd respondent had directed the 1st respondent to suspend the petitioner and initiate enquiry against him.

Section 64(5) of the Act consecrates power on the Wakf Board to suspend a Mutawalli pending the conclusion of an enquiry when under sub-section (3) of Section 64 of the Act is proposed or commenced against any Mutawalli and if the Board is of the opinion that it is necessary to place him under suspension in the interests of the Wakf. The provision clearly and unequivocally consecrates the power and discretion to place a Mutawalli under suspension pending enquiry in the Wakf Board. It is the 2nd respondent who is appointed as a Special Officer of the A.P.State Wakf Board as the Wakf Board was superceded by the State. Therefore, it is the 2nd respondent who could exercise the power of the Wakf Board. Section 64(3) of the Act neither expressly nor by any necessary compelling implication enables the Wakf Board or the 2nd respondent acting as the Wakf Board to delegate such powers and discretion as are exclusively consecrated in the wakf board to any other authority including the 1st respondent. The learned standing counsel for the wakf board does not contend that there was any such delegation either. In the

circumstances, the 2nd respondent acted incompetently in directing the 1st respondent to suspend and enquire into the allegations against the petitioner. Such an entrustment, in the statutory context above, amounts to abdication, an abdication that is prohibited by the extant and specific provisions of the Wakf Act, 1995. The impugned order thus and on this singular ground invites invalidation. It is accordingly set aside. It is however open to the 2nd respondent to itself exercise the powers and discretion without abdicating it and exercise such power in accordance with law.

The writ petition is allowed to the extent indicated above.

17..06..2005

Note: Furnish CC in 3 days

(B/o)

msv

To

1. The Chief Executive officer, A.P.State Wakf Board, Haz House,

Opposite Public Gardens,
Nampally, Hyderabad.
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